

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
1998 Biennial Regulatory Review--)	CS Docket No. 98-61
)	
"Annual Report of Cable Television)	
Systems," Form 325, filed pursuant to)	
Section 76.403 of the Commission's Rules)	

REPORT AND ORDER

Adopted: February 1, 1999

Released: March 31, 1999

By the Commission: Commissioners Furchtgott-Roth and Powell dissenting and issuing separate statements.

I. INTRODUCTION

1. In this *Report and Order* ("Order") we revise and streamline the Form 325, "Annual Report of Cable Television Systems,"¹ which is provided for in Section 76.403 of the Commission's rules.² Form 325 solicits basic operational information from all cable television systems nationwide, including: the operator's name and address; system-wide capacity and frequency information; channel usage; and number of subscribers.³

¹FCC Form 325, *Annual Report of Cable Television Systems* (approved by OMB 3060-0061).

²47 C.F.R. § 76.403 provides:

The operator of every operational cable television system shall correct and/or furnish information in response to forms, encompassing each community unit, mailed to said operator by the Commission. These include:

Community unit data - "Annual Report of Cable Television System," Form 325, Schedule 1

Physical system data - "Annual Report of Cable Television System," Form 325, Schedule 2

Operator ownership data - "Annual Report of Cable Television System," Form 325, Schedules 3 and 4

These forms shall be completed and returned to the Commission within 60 days after the date of mailing by the Commission.

NOTE: The operator of a cable television system having fewer than 1000 subscribers shall only be required to file Schedules 1 and 2 of Form 325 for each community unit.

³The current version of Form 325 is divided into four substantive parts. Part 1 requests the operator's name, address, and tax identification number for each franchised community served by the cable system. Part 2 solicits specific information related to each franchised community, including the type of area served, population, subscribers, potential subscribers, cable plant length, and initial date of service. Part 3 requests frequency and signal distribution information. Part 4 asks for information regarding local programming, ancillary services offered by the system, users (i.e., government, educational, advertisers), and capabilities of the system (i.e., public access, leased access).

2. In 1998 *Biennial Regulatory Review -- "Annual Report of Cable Television Systems," Form 325*, filed pursuant to Section 76.403 of the Commission's Rules, *Notice of Proposed Rulemaking ("Notice")*,⁴ we sought comment on whether to modify or eliminate the requirement that all cable systems annually file Form 325. We issued the *Notice* in connection with Section 11 of the 1996 Telecommunications Act which instructs the Commission "to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest."⁵ Although Section 11 does not specifically refer to cable operators, the Commission has determined that it is in the public interest to review and streamline the cable television rules in the spirit of Section 11.⁶ In this regard, we assess the relevance of Form 325 for the purposes of our policymaking and enforcement activities. We conclude that it is possible to significantly streamline the existing information collection process in ways that will both reduce the administrative burden placed upon both the cable industry and the Commission, and yet will permit the Commission to meet its responsibilities in regulating the cable television industry.

II. BACKGROUND

3. Form 325 serves as the Commission's basic annual reporting requirement for the cable television industry. The form was first developed for use in 1966⁷ and was subsequently adopted as an annual filing requirement in 1971.⁸ The form was intended to provide the Commission with information that would be of value in the development of policies and rules applicable to the cable television industry.⁹ In addition, Form 325 has been used by the Commission to obtain subscribership data from which to calculate or review cable operators' annual federal regulatory fee payments¹⁰ and to assist in the Commission's signal leakage and interference elimination program by collecting information on the frequencies used within

⁴13 FCC Red 12266 (1998) (*"Notice"*).

⁵Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); 47 U.S.C. § 161.

⁶See FCC News Release, *1998 Biennial Review Begun Early* (November 18, 1997).

⁷*In the Matter of: Amendment of Subpart L, Part 91 et al., Second Report and Order* in Docket Nos. 14895, 15233, 15971, 2 FCC 2d 725, 765 (1966).

⁸*In the Matter of: Amendment of Part 74, Third Report and Order* in Docket 18397, 32 FCC 2d 13 (1971).

⁹*Id.*

¹⁰*In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Report & Order*, Docket 95-3, 10 FCC Red 13512 (1995). Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy, rulemaking, and user information activities. See 47 U.S.C. § 159(a).

systems.¹¹

4. In the *Notice*, we explained that the processing and compilation of Form 325 data has been a labor intensive process for the Commission.¹² In addition, we were concerned that the filing of the form not be burdensome to the cable industry. Consequently, we questioned the form's overall utility given the resources necessary to maintain its collection. In the past, in accordance with Section 76.403 of the Commission's rules,¹³ Form 325 was mailed to every cable system in the country -- at present nearly 11,000 systems. Information collected by the form was then entered into the Commission's computer database by the staff. In order to reduce the filing burden on cable operators and to increase the accuracy of the database, preprinted forms reflecting the information collected from the previous year's filing were sent to system operators. The system operator was then only required to correct information that had changed since the last filing. Although this process was intended to ease the burden on system operators and to be administratively efficient, its review proved to be labor intensive for the Commission because the returned forms, many of which were deficient in some manner, had to be reviewed on an individual basis for accuracy by the staff before being entered into the database.¹⁴ Because of the pressing demands of rate regulation and the implementation of the Telecommunications Act of 1996, Commission resources were deployed to focus on those areas and it became increasingly difficult to complete the data input process. Thus, Form 325 has not been mailed out since 1994.

III. DISCUSSION

5. In response to the *Notice* in this proceeding we received 4 comments and 3 reply comments. Comments supporting the retention of the current Form 325 were filed by two parties: the Institute for Public Representation, *et. al.* ("IPR")¹⁵ and the National Association of Broadcasters ("NAB"). Comments advocating the elimination of Form 325 were filed by the National Cable Television Association ("NCTA"), Ameritech New Media, Inc. ("Ameritech"), and Adelphia Communications Corporation, *et. al.* ("Adelphia").¹⁶ In arguing for the elimination of Form 325, commenters contend that the form serves no

¹¹47 C.F.R. § 76.615(a). The signal leakage and interference elimination program is designed to locate and repair sources of cable system signal leakage in order to minimize the potential for such leakage to interfere with aeronautical and public safety communications.

¹²*Notice* at 3.

¹³47 C.F.R. § 76.403.

¹⁴Approximately 40% of the returned forms had some deficiency.

¹⁵IPR filed its comments jointly with the following groups: Association of Independent Video and Filmmakers, Center for Media Education, Civil Rights Forum, and OMB Watch.

¹⁶Adelphia filed its comments jointly with the following groups: Falcon Cable TV, the Pennsylvania Cable & Telecommunications Association, and Tele-Media Corporation of Delaware.

identifiable regulatory or policy purpose.¹⁷ Commenters further claim that the Form 325 process imposes a significant burden on the cable industry.¹⁸

6. NCTA describes the form as a "relic of a bygone era."¹⁹ Ameritech argues that the form has outlived its usefulness and asserts that the collection process is "a classic example of a regulatory requirement in search of a reason."²⁰ NCTA and other commenters argue that the initial purpose for which the form was developed -- to provide the Commission with basic information on the cable industry that would be valuable in the development of regulations and policies -- largely has been served as the Commission has created a viable regulatory structure for the cable industry.²¹ With respect to individual system waiver and enforcement proceedings, NCTA notes that the use of Form 325 data is not necessary because relevant information may be obtained directly from the parties involved in such proceedings.²² Thus, commenters argue that it is inefficient to collect information from every cable system in the country in order to resolve waiver and enforcement cases that affect only some systems.²³

7. Some commenters also believe that the information contained in the form is available from alternative sources.²⁴ NCTA asserts that Warren Publishing, Inc. ("Warren"), the publisher of the *Television & Cable Factbook*, collects cable system-specific data and includes in its publications much of the same information that is contained in Form 325.²⁵ NCTA notes that Warren also has an online database that contains system-specific information which is updated on a continuing basis.²⁶ NCTA claims that Warren's

¹⁷NCTA Comments at 3; Ameritech Comments at 3; Adelphia Reply Comments at 3-5.

¹⁸Ameritech Comments at 2; NCTA Comments at 2.

¹⁹NCTA Comments at 3.

²⁰Ameritech Comments at 3.

²¹NCTA Comments at 3-4; Ameritech Comments at 3.

²²NCTA Comments at 2 and at 4-5. Commenters point out that the Commission has ample authority to request or require parties to provide information when needed for specific purposes. Ameritech Comments at 4; NCTA Comments at 13; NCTA Reply Comments at 3.

²³NCTA Comments at 2; Adelphia Reply at 4.

²⁴NCTA Comments at 6-10; Adelphia Reply Comments at 3; Ameritech Reply Comments at 1.

²⁵NCTA Comments at 7; Adelphia Reply Comments at 3.

²⁶NCTA Comments at 7.

materials, not the Commission's Form 325 data, are relied upon by businesses and researchers for system-specific information about the cable industry.²⁷ NCTA and Adelphia state that A.C. Nielsen also collects information required by Form 325.²⁸ IPR and NAB, who support the retention of the reporting requirement, argue that information compiled by commercial sources may not be as accurate and reliable as data provided directly by cable operators.²⁹

8. NCTA and Adelphia also contend that information contained in Form 325 duplicates information that is available through other governmental filings.³⁰ Adelphia states, for example, that Form 325 data is available through filings made pursuant to other Commission rules as well as filings made with the Securities and Exchange Commission.³¹ NCTA asserts that every cable system is required to file with the Copyright Office, on a semi-annual basis, information concerning the total number of activated channels as well as the number of activated channels on which the cable system carries television broadcast stations.³² Moreover, the Commission has ample authority to require parties to provide information when needed for specific purposes.³³ Thus, in the event that both governmental and commercial sources fail to provide the necessary information or the information proves to be unreliable, the Commission, it is argued, can always seek the information on an as needed basis.³⁴

9. In arguing for the retention of Form 325, IPR contends that information contained in the form is critical to the Commission's assessment of cable operators' compliance with horizontal integration, must-carry, and leased access rules.³⁵ Specifically, IPR asserts that without reliable information on leased

²⁷ *Id.*

²⁸ NCTA Comments at 8; Adelphia Reply Comments at 3. NCTA asserts, for example, that A.C. Nielsen's cable database (known as the Cable Online Data Exchange or "CODE") provides system-specific information including the number of homes passed, channel capacity, number of channels in use and is updated quarterly. NCTA Comments at 8.

²⁹ IPR Comments at 12; NAB Comments at 2 (noting that commercial sources rely on voluntarily submitted data).

³⁰ NCTA Reply Comments at 2; Adelphia Reply Comments at 3.

³¹ Adelphia Reply Comments at 3. Adelphia identifies filings made pursuant to 47 C.F.R §§ 76.12, 76.400, 76.612, and 76.615 as examples of filings that duplicate information requested by Form 325. *Id.*

³² NCTA Reply Comments at 2-3 (citing Copyright Office Form SA1-21).

³³ Ameritech Comments at 4; NCTA Comments at 13; NCTA Reply Comments at 3.

³⁴ NCTA Reply Comments at 3.

³⁵ IPR Comments at 11 and 11.

access usage, the Commission cannot assess the efficacy of its leased access rules.³⁶ IPR further argues that the public plays a significant role in monitoring the cable industry and that the Commission's collection of relevant industry data is important to that role.³⁷ In response to IPR's claims that Form 325 is critical to the Commission's regulatory oversight, Adelphia states that the form "does not provide *any* information which would enable even the most experienced regulator to determine whether a particular cable system was in compliance with the rather detailed and fact specific application of those [leased access, must carry, and horizontal ownership] rules."³⁸

10. NAB believes that the continued collection of Form 325 may be necessary to ensure the availability of critical cable information for purposes of the upcoming digital television ("DTV") must carry proceeding.³⁹ However, NAB states that its concerns over the form will be allayed so long as the Commission is satisfied that adequate, accurate, and up-to-date information on specific cable system capacity and channel usage will be available to the Commission and to private parties for purposes of that proceeding.⁴⁰ NAB argues that information about cable usage and capacity will be vital to the Commission's decision-making process as well as to the comments provided by the parties involved in the DTV must carry rulemaking.⁴¹ NAB is concerned that A.C. Nielsen does not elicit specific information on physical channel capacity, such as cable system capacity in megahertz and systems' compression of signals, which will be important in determining cable capacity to carry DTV signals.⁴² IPR also asserts that the Commission is statutorily obligated to collect Form 325 data from cable operators under Section 628(g) of the Communications Act of 1934, as amended. This Section requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming.⁴³

11. As explained more fully below, we seek in this proceeding to strike a balance to reduce the burdens placed upon the industry and on Commission resources in the Form 325 information collection process while still retaining access to core information that is needed by the Commission in order to perform its regulatory functions. We believe these objectives can best be achieved by drastically reducing the

³⁶IPR Comments at 12.

³⁷ *Id.*

³⁸Adelphia Reply Comments at 4.

³⁹NAB Comments at 1-2.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³Communications Act § 628(g); 47 U.S.C. § 548(g). IPR Comments at 11.

universe of system operators required to file the Form 325 while, at the same time, modifying and clarifying the form so that the information obtained from those operators reporting can be filed by them and utilized by the Commission with minimal burden. As explained below, we believe there is sufficient value in the information collected, with appropriate modifications and deletions, that the information collection process should not be altogether eliminated.

12. We believe that sufficient information could be collected to monitor the cable industry by sending out approximately 1,100 forms, an overall reduction of over 9,000 forms. This amount of forms will substantially reduce the burden on the cable industry without undermining the form's utility. By sending out forms to the approximately 700 systems with 20,000 or more subscribers, we will be able to gather information covering 70 percent of America's cable subscribers. With regard to cable systems with less than 20,000 subscribers, approximately 9,800 cable systems,⁴⁴ we believe that a mandatory requirement to have all of these systems file Form 325 would be costly and burdensome for the industry as well as for the Commission. A less costly and less burdensome approach to gather information about cable systems with less than 20,000 subscribers would be to adopt a sampling methodology.⁴⁵ Sampling is a way of providing accurate information while at the same time reducing the burden of compliance for the industry and processing costs for the Commission. In this regard, the Commission has chosen to use a stratified sampling technique to collect the required information from systems serving less than 20,000 subscribers.⁴⁶ We believe that the information collected based on this sampling of subscribers, along with the information gathered from 100% of systems with over 20,000 subscribers, will provide the Commission with an adequate profile of how cable systems operate today and how they impact the general population.

13. Moreover, we believe the burden on those filing information will not be onerous. The burden on these systems will be substantially reduced because the modified form will collect information on a system-wide basis rather than on a community-by-community basis which was done by the old form. This alone will substantially reduce the burden on many operators who may serve ten or more communities on one system.⁴⁷ Additionally, the modified form will be reduced in size with many questions on the old form

⁴⁴Warren Publishing, Inc., *Television & Cable Factbook, Services Volume No.66, 1998*, at I-97.

⁴⁵See, e.g., B.J. Mandel, *Statistics for Management*, Dangary Publishing Company, 1984, at 174-176 ("Mandel"). In summary, sampling is used to lower cost, maintain or improve accuracy, and improve the feasibility and speed of collecting the information desired.

⁴⁶Applying standard statistical formula to the 9,800 cable systems serving less than 20,000 subscribers results in a sample size of 450 systems. See Mandel at 258. These 450 systems are allocated into two strata based on system size by subscribers: systems with 5,000 to 19,999, and systems serving less than 5,000 subscribers. We allocate the sample size of 450 to each of these strata according to the percentage of subscribers in each strata. Since the systems making up the strata serving 5,000 to 19,999 subscribers serve approximately 11.8 subscribers or about 62% of cable subscribers served by systems with less than 20,000 subscribers, we allocate 62% of the sample size (i.e., 62% of 450) to this category. This yields a sample size for this category of 279 systems. The second category (systems serving less than 4,999 subscribers) contains systems which serve approximately 7.3 million subscribers or about 38% of all subscribers in both strata. We therefore allocate 38% of the sample size, i.e., 171 to this strata.

⁴⁷*Cable system or cable television system.* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which

being deleted. We anticipate that in the future this information will be filed electronically, but we will retain the paper filing requirement until the electronic filing system is developed. We are also eliminating the process whereby pre-printed forms containing information previously filed at the Commission are sent out for correction each year.⁴⁸ Although this method of data collection was designed to make the process more efficient for both the Commission and filing parties, in practice, it has not proven to be of assistance and has in fact tended to impede the entire process. We will, however, be investigating methods to reduce the burden on those filing the form. We may consider using our internet web site to distribute the form. This may prove to be a more efficient and convenient method of distribution of the form for cable operators and will reduce the administrative burden on the Commission.

14. In making our decision to retain a streamlined information collection process, we have carefully reviewed the arguments of those who contend that the information collected is available from other governmental or nongovernmental sources, or that the information collected is not needed for legitimate regulatory purposes. We are not persuaded, however, that either of these arguments is correct. With respect to the question of whether this information is available from other sources, we are well aware that there are commercial resources available that contain considerable amounts of information regarding the cable industry. The Commission has relied on such alternative sources in the past, including, for example, in connection with its *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming* ("Cable Competition Report").⁴⁹ The information collected by these alternative sources, however, does not specifically answer the questions to be posed by Form 325 (e.g., digital capacity, leased access, must carry and retransmission consent). Nor is there any assurance that the questions that are asked by the commercial entities collecting information are answered consistently or that the information provided is current. We note, for example, a recent filing in a rulemaking proceeding by a cable system operator that refers to the data contained in the *Television Factbook* as being, in some instances, "years old" so that the operator had to limit its analysis to only those systems reporting more recently.⁵⁰

15. Further, in making policy decisions in matters relating to such issues as digital television broadcast signal carriage, having available current and accurate information collected with only minimal cost

is provided to multiple subscribers within a community, but such term does not include: (1) A facility that services only to retransmit the television signals of one or more television broadcast stations; (2) A facility that serves subscribers without using any public right-of-way; (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended . . . ; (4) An open video system that complies with Section 653 of the Communications Act; or (5) Any facilities of any electric utility used solely for operating its electric utility systems. 47 C.F.R § 76.5.

⁴⁸At least initially, we will mail out blank forms each year to affected cable operators. However, we will continue to examine less time consuming methods of distributing the form, such as posting the form on the Internet.

⁴⁹*Fourth Annual Report, Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 97-141, FCC 97-423, rel. Jan. 13, 1998 ("Cable Competition Report"). See NCTA Comments at 9; Ameritech Reply Comments at 2.

⁵⁰Comments of Tele-Communications, Inc., in Docket 92-264 filed August 14, 1998, Page A-5, note 2.

and burden will be of considerable importance to the Commission. Although we appreciate the suggestion that such information could be collected more efficiently on an *ad hoc* basis, there are considerable delays associated with such a process and the information is likely to be needed on an ongoing basis for a variety of policy issues.

16. Moreover, we believe that the streamlining and modification of the form we adopt today will greatly increase its relevance in these transitional times while at the same time dramatically reducing the burden it imposes. In order to improve the overall usefulness of the form and its data, we have made a number of modifications to the form itself and its accompanying instructions. Our initiative accomplishes a number of goals, including soliciting information most directly responsive to our regulatory needs, removing certain ambiguities in the instructions, and modifying or eliminating outdated questions. We believe that the information collected in the form is needed for current legitimate regulatory purposes, as well as for future regulatory purposes. The Form 325 modifications will assist us in collecting information regarding the conversion of cable service from the analog to the digital medium as well as information regarding the cable industries' provision of advanced services. The information collected in this regard will allow the Commission to monitor the scope of the conversion process and ensure that the American public is well served.

17. The current four part Form 325 will be replaced with a streamlined, user-friendly Form 325 containing a reduced number of questions. In addition, information, as noted above, will no longer be collected on both a Community Unit Identification Number ("CUID") basis and a Physical System Identification Number ("PSID") basis, but will be collected solely on a PSID basis. This method of reporting information on a system basis will eliminate a previously cumbersome and excessively detailed procedure designed to elicit information regarding cable operators and the communities they serve on an individual community unit basis. We also modify Section 76.615 of the Commission's rules which requires cable operators to notify the Commission annually of all signals carried in the aeronautical radio frequency bands, a requirement previously fulfilled by the filing of a Form 325.⁵¹ Since all cable operators will no longer be required to file Form 325, this requirement will now be satisfied by a cable operator filing Commission Form 320, "Basic Signal Leakage Performance Report."⁵²

18. The following modifications will be made to the revised Form 325: (See Appendix A).

General Information

19. In this portion of the form, we will solicit information from cable operators regarding the number of subscribers served by their systems as well as the number of potential subscribers (homes passed) that cable operators can access from their systems. This will provide the Commission with general information about the size of systems and structural changes that are taking place such as consolidation and clustering. We will also seek information regarding miles of cable plant and how much of the plant is devoted to coaxial cable or fiber optic cable, including the number and average nodal sizes in terms of

⁵¹47 C.F.R. § 76.615.

⁵²FCC Form 320, Basic Signal Leakage Performance Report (approved by OMB 3060-0433).

subscribers served. Additionally, we will also ask whether the cable system uses microwave facilities as part of its cable plant.

20. In order to better assess the technical capabilities of cable systems and the future of the industry, we are interested in ascertaining general information regarding the provision of digital services. In that regard, the form will ask for information such as: number of cable modems deployed and the number of cable modem subscribers; number of subscribers requiring set-top boxes and the number of set-top boxes in inventory and deployed -- analog/digital/hybrid -- and total amount of analog spectrum versus digital spectrum. This information will enable the Commission to analyze cable operators' technical capabilities and the systems' technical potential for offering sophisticated services, including cable modem, IP telephony, and internet services as well as general telephony. This will aid the Commission in evaluating how, where, and how soon advanced digital services can be introduced.

Frequency and Signal Distribution Information:

21. In this part of the form, we will seek information pertaining to areas such as transmitted spectrum and channel capacity. Specifically, we will solicit information regarding upstream channel usage (i.e., two-way capability) in order to ascertain the capabilities of cable operators to transmit information from their subscribers' premises back to the cable headend. We will also seek information regarding downstream channel usage in order to ascertain the total number of video channels, both analog and digital, capable of being carried on a system, including the number of digital channels per 6 MHz of spectrum. Of that number, we will ask for information regarding the total number of channels, including all non-video channels, activated and delivered on the system. We will also ask operators to provide information about aggregate totals for addressable converters, modems deployed, and the number of telephony subscribers that use their systems. We will also continue to require operators to submit their channel lineups. We will ask operators to identify which channels are devoted to leased access, government access, public and educational access, and which stations are carried pursuant to must carry or retransmission consent provisions. We will also ask operators to provide information regarding the number of tiers carried on their systems and how many channels may be carried on each of those tiers.

22. We believe that the information solicited in this section of the form will enable us to assess industry compliance with our rules and to monitor industry trends in various regulated areas. For instance, in light of the statutory requirements set forth in Section 612 of the Communications Act of 1934, as amended, the Commission has an obligation to set and monitor the rules for the price, terms and conditions of leased access use pursuant to Congressional direction to promote competition and diversity in the video marketplace consistent with the growth and development of cable systems.⁵³ Because the number of leased access channels being used by leased access programmers on a cable system is not available from commercial sources, we believe that our ability to have access to this information as reported on the Form 325 will be useful in monitoring leased access use by the industry and will assist us in soliciting general information, if deemed necessary, from those cable operators we know to be utilizing leased access channels.

⁵⁴ Similarly, in order to determine the impact of our must carry and retransmission consent rules and for

⁵³ 47 U.S.C. § 532; *see also* 47 C.F.R. §§ 76.970, 76.971.

⁵⁴ The Commission's 1997 Price Survey provides some information on leased access, but only by sampling rather than on a system-by-system basis. *Report on Cable Industry Prices*, 12 FCC Rcd 22756 (1997). We believe that the

purposes of future policymaking, it would be helpful for cable operators to identify which local broadcast channels are carried under our must carry rules versus retransmission consent. Moreover, by requiring cable operators to identify what kind of programming is carried on which tiers, we will be able to determine how many, and what kind of service options are provided to subscribers.

23. The modifications to the Form 325 and its collection process will accomplish the goals of reducing the administrative burdens imposed upon both the cable industry and the Commission, while still allowing the Commission access to a consolidated source of information that will serve to better assist it in regulating the cable television industry. The modified form, by providing consistent, industry-wide data, will also assist the Commission in preparing its annual cable competition report. By changing the universe of cable systems reporting to systems with more than 20,000 subscribers, in addition to a sampling of cable systems with less than 20,000 subscribers, we will drastically reduce the number of Form 325 filings made at the Commission from nearly 11,000 to approximately 1,100. However, we believe that the information collected from this group of systems will give us an accurate picture of the entire cable industry at large. We also believe that the new Form 325 will still provide a mechanism that will enable the Commission to oversee and audit overall compliance with its regulatory fee requirements. In this regard, we note that systems serving more than 70% of the nation's cable subscribers will be reporting information. In addition, the revised form, while limited in scope and distribution, will nevertheless allow the Commission to monitor the vast changes which are occurring in the cable industry.

24. Moreover, the burden imposed upon those operators subject to the filing requirement is reduced because only a limited amount of information will be required to be reported and the information will be collected on a system-wide basis rather than on a community-by-community basis. In the past, the collection of data on a community basis proved to be a difficult and time consuming task for the operator because of the sheer volume of communities served by individual cable systems. Thus, while the administrative burdens imposed on the industry and the Commission will be significantly reduced, we believe that the new and improved form will prove useful to the Commission in its enforcement and policymaking functions.

IV. REGULATORY FLEXIBILITY ANALYSIS

25. The regulatory flexibility analysis is attached to this Order as Appendix B.

V. PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

26. The requirements adopted in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to contain new or modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collection requirements contained in this Order, as required by the 1995 Act. Public comments are due 30 days from date of publication of this Order in the Federal Register; OMB comments are due 60 days from date of publication of this Order in the Federal Register. Comments should address: (a) whether the collection of information is necessary for the proper performance

new Form 325 will provide a more complete picture of leased access use in the cable industry.

of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

27. Written comments by the public on the new or modified information collection requirements are due 30 days after date of publication of this Order in the Federal Register. Written comments by OMB on the new or modified information collection requirements are due 60 days after date of publication of this Order in the Federal Register. Comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

VI. PROCEDURAL PROVISIONS

28. Effective Date. Upon approval by the Office of Management and Budget ("OMB"), the rules adopted in this Report and Order shall become effective. The Commission will publish a notice in the Federal Register announcing the effective date.

VII. ORDERING CLAUSES

29. **IT IS ORDERED** that, pursuant to authority found in Sections 4(i), 303(r) and 628 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 548 that Section 76.403 of the Commission's rules, 47 C.F.R. § 76.403, **IS AMENDED** as set forth in Appendix C. In view of our action today which limits the number of cable operators filing Form 325, we also modify Section 76.615 of the Commission's rules, 47 C.F.R. § 76.615. Section 76.615 requires cable operators to notify the Commission annually of all signals carried in the aeronautical radio frequency bands and was a requirement previously fulfilled by the filing of a Form 325. Since all cable operators will no longer be required to file Form 325, the Section 76.615 requirement will now be satisfied by a cable operator filing Commission Form 320.

30. **IT IS FURTHER ORDERED** that the rules as amended in Appendix C shall become effective 30 days after publication in the Federal Register. The information collections contained in these rules shall become effective 70 days after publication in the Federal Register, following OMB approval, unless a notice is published in the Federal Register stating otherwise.

31. **IT IS FURTHER ORDERED** that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A - FORM 325 (NOT YET APPROVED BY OMB).

APPENDIX B**FINAL REGULATORY FLEXIBILITY ANALYSIS****A. Background**

1. As required by the Regulatory Flexibility Act (RFA),⁵⁵ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the Notice of Proposed Rule Making ("NPRM") in this proceeding.⁵⁶ The Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the NPRM, including comments on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") in this Report and Order ("Order") conforms to the RFA.⁵⁷

B. Need for Action and Objectives of the Rules

2. Section 11 of the 1996 Telecommunications Act requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest.⁵⁸ Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

C. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

3. While no commenter has specifically responded to the IRFA, several commenters allege that the current requirement to file a Form 325 is unnecessarily burdensome. Commenters generally contend that the current Form 325 has out lived its usefulness and the information contained therein is available from other sources.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The RFA defines

⁵⁵See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

⁵⁶ 1998 Biennial Regulatory Review --Annual Report of Cable Television System, Form 325, filed pursuant to Section 76.403 of the Commission's Rules, 13 FCC Rcd 12266 (1998).

⁵⁷See 5 U.S.C. § 604.

⁵⁸47 U.S.C. § 161; News Release, Nov. 18, 1997.

the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶⁰ Under the Small Business Act, a small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the SBA.⁶¹ The rule implementing a streamlined Form 325 that we adopt in this Report and Order will only affect cable systems.

5. SBA Definitions for Cable. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts.⁶² According to the Census Bureau data from 1992, there were approximately 1,758 cable systems with less than \$11 million in revenue.⁶³

6. Additional Cable System Definitions: In addition, the Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving no more than 400,000 subscribers nationwide.⁶⁴ Based on recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.⁶⁵ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues

⁵⁹5 U.S.C. § 601(6).

⁶⁰5 U.S.C. § 601(3) (1980) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after an opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions in the Federal Register."

⁶¹*Small Business Act*, 15 U.S.C. § 632.

⁶²13 C.F.R. § 121.201 (SIC 4841).

⁶³U.S. Department of Commerce, Bureau of the Census, Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (Bureau of the Census data under contract to the Office of Advocacy of the SBA).

⁶⁴47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995).

⁶⁵Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

in the aggregate exceed \$250,000,000."⁶⁶ The Commission has determined that there are 61,700,000 cable subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁶⁷ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450.⁶⁸ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Description of Reporting, Record keeping and Other Compliance Requirements

8. This analysis examines the costs and administrative burdens associated with our rules and requirements. The rule we adopt today significantly reduces the burden on the cable industry. The rule requires that all cable systems having 20,000 or more subscribers, and a sampling of cable operators having less than 20,000 subscribers, must file a streamlined Form 325. This will result in reducing the filing burden from nearly 11,000 to approximately 1,100 forms filed by cable operators. In addition the form itself has been modified to be less burdensome. We estimate that it will take operators approximately 2 hours to fill out each newly revised Form 325. No other compliance requirements are imposed.

F. Steps Taken to Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered

9. We believe that our amended rule will alleviate Form 325 filings for some small cable operators under the SBA's definition of small businesses. In addition, by our action of streamlining Form 325, the burden on all cable operators will be substantially reduced.

G. Report to Congress

10. The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). The Report and Order and this FRFA (or summaries thereof) will also be published in the Federal Register, see 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

⁶⁶47 U.S.C. § 543(m)(2).

⁶⁷47 C.F.R. § 76.1403(b) (SIC 4833).

⁶⁸Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

APPENDIX C**Rules**

Part 76 of Title 47 of the Code of Federal Regulations is to be amended as follows:

PART 76 -- MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. Section 76.403 is amended to read as follows:

§76.403 Cable television system reports.

The operator of every operational cable television system that serves 20,000 or more subscribers shall annually file with the Commission a Form 325 soliciting general information and frequency and signal distribution information on a Physical System Identification Number ("PSID") basis.

These forms shall be completed and returned to the Commission within 60 days after the date of receipt by the operator.

NOTE: The Commission retains its authority to require Form 325 to be filed by a sampling of cable operators with less than 20,000 subscribers.

2. Section 76.615 is amended to read as follows:

§76.615 Notification requirements.

All cable television operators shall comply with each of the following notification requirements:

(a) The operator of the cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands, noting the type of information carried by the signal (television picture, aural, pilot carrier, or system control, etc.) The timely filing of the FCC Form 320 will meet this requirement.

Dissenting Statement of Commissioner Harold Furchtgott-Roth
1998 Biennial Regulatory Review: "Annual Report of Cable Television Systems, Form 325,
Filed Pursuant to Section 76.403 of the Commission's Rules, CS Docket No. 98-61

For the following reasons, I would have eliminated altogether the rule requiring cable operators to file Form 325.⁶⁹

First, the collection of this information is not statutorily required, nor does the item identify any specific, statutorily-based purpose for this information once collected. As I have said in other contexts, we should not compile data for its own sake. *See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*; MM Docket Nos. 98-43, 91-140, 94-149 (released Dec. 3, 1998). As Commissioner Powell points out, the fact that we have not collected this information for the last four years undermines the assertion of actual need for it.

Second, any information that we need in order to make regulations governing cable operators can be obtained in the context of specific rulemakings. Those interests whose business operations will be affected by proposed regulations have every incentive to provide the Commission with information on relevant topics. Moreover, general industry information can be readily obtained from private groups, such as the National Cable Television Association, or from industry publications.

Third, any rationale for the collection of this information loses force when the filing requirement is not applied evenly to all cable operators. The usefulness of information gleaned from only a small segment of the industry is limited. I also question the fairness of a sampling system as an alternative, since, at the end of the day, responding to these inquiries is costly to operators and sampling imposes those costs on operators on an arbitrary basis.

⁶⁹As I have stated in other "Biennial Review" items undertaken pursuant to section 11(b) of the Communications Act, 47 USC section 161(b), I do not believe that the 1998 section 11(a) review was as thorough as it should have been. *See generally* Report on Implementation of Section 11 by the Federal Communications Commission (Dec. 21, 1998), <www.fcc.gov/commissioners/furchtgott-roth/reports/sect11>. I look forward to working with the Chairman and other Commissioners on the 2000 Biennial Review, planning for which should begin in mid-1999.

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL POWELL**

*Re: 1998 Biennial Regulatory Review: "Annual Report of Cable Television Systems, Form 325,
Filed Pursuant to Section 76.403 of the Commission's Rules, CS Docket No. 98-61*

I respectfully dissent from the Commission's decision not to eliminate altogether the rule requiring cable operators to file Form 325. Although the decision purports to revise and streamline the form, I believe that it would be truer to the deregulatory objectives of the Telecommunications Act of 1996 to have simply dispensed with the form altogether. As Commissioner Furchtgott-Roth has noted in his dissent, there is no statutory requirement that the Commission collect the information required by this form. Indeed, as the item notes, the Commission has not collected the information since 1994. *Order*, para. 4. Under these circumstances, I find it hard to accept the assertions of the order, that there is an actual need for the Commission to reimpose this regulatory burden on any cable operators.

There is no reason to assume, as this *Order* does, that general information about cable operators is not available from private sources or industry groups such as the National Cable Television Association. Nor is there any reason to assume that private parties will lack the information they need to file leased access or program access complaints. Parties have continued to file complaints and the Commission has acted on them even though it was not collecting Form 325 information. Similarly, the contention of the *Order* that the information "will also assist the Commission in preparing its annual cable competition report" rings hollow in light of the fact that the Commission conducts a separate proceeding to collect information for that report. This proposition is even more questionable since the information collected will only be obtained from select cable systems.

In sum, I am not persuaded that there is a need to reimpose the requirement that cable operators file Form 325, therefore, I respectfully dissent.